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## LEGAL PROTECTION OF THE ENVIRONMENT IN UKRAINE: CURRENT STATE AND PROSPECTS

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**Purpose:** to investigate the concept of "legal protection of the natural environment", to analyze the current state and to determine the prospects for improving the legal protection of the natural environment on the way to European integration in the field of environmental protection. **Methods:** general scientific and special legal methods of scientific knowledge are applied, in particular: system-structural method, observation method, generalization method, methods of analysis and synthesis. **Results:** on the basis of the study of legal norms and provisions of scientific works, a terminological analysis was carried out and the author's definition of the definition "legal protection of the natural environment" was provided. It was concluded that despite a number of positive steps in ensuring state policy in the field of environmental protection, in Ukraine in the near future it is necessary to carry out reforms in such areas as: legal responsibility for environmental violations; environmental control; environmental monitoring. **Discussion:** in the conditions of martial law, an urgent issue is not only the adoption of normative legal acts, but also the adoption of a set of measures by state authorities. It is emphasized that a lot has already been done in this direction in Ukraine, namely: 1) a number of normative legal acts have been adopted; 2) the National Council for the Recovery of Ukraine from the Consequences of the War was created; 3) the "Environmental safety" section of the project of the National Recovery Plan of Ukraine was developed; 4) 7 methods for determining damage to the natural environment were developed; 5) an agreement was concluded regarding Ukraine's participation in the Environment and Climate Action Program (LIFE Program), etc.

**Key words:** environment; natural environment; legal protection; protection; atmospheric air; environmental crime; damage; legal responsibility.

### Statement of the problem and its relevance.

One of the most urgent tasks facing Ukraine today is the problem of preserving, improving and restoring the natural environment that is favorable for life and health. After all, the full-scale war on the territory of Ukraine, which was started by the Russian Federation a year ago, active hostilities, bombing and burning of industrial facilities, energy infrastructure facilities, oil depots and forests caused colossal damage to the surrounding natural environment. According to data announced on

December 20, 2022 by Prosecutor General Andriy Kostin during an online meeting with the President of the European Network of Prosecutors for Environmental Protection (hereinafter ENPE) Anne Brosnan, during the full-scale war in Ukraine, the ecological status of 16 wetlands protected by Ramsar was violated convention, more than 680,000 tons of petroleum products were burned during missile attacks, which led to significant air pollution, more than 2 million hectares of forests were damaged as a result of hostilities [1].

Undoubtedly, the above-mentioned indicators give grounds to assert that the aggressor country has deliberately and in some cases accidentally caused damage to the natural environment, the consequences of which will be felt by society and the ecosystem not only of our country, but also of the whole world for many years to come.

Taking into account the difficult environmental situation in the country, Ukraine faces priority tasks - conducting effective and targeted activities for the organization and coordination of environmental protection measures, development and adoption of draft laws to ensure environmental safety, rational use and reproduction of natural resources, development of state targets environmental programs and methods for assessing the damage caused by the aggressor country, performing the function of state environmental supervision (control) in the conditions of martial law, cooperation with expert institutions of ENPE member states, which have the opportunity to make independent expert opinions for the purpose of assessing the damage to the environment caused by armed aggression too.

**Analysis of research and publications on the problem.** The works of leading domestic and foreign scientists, practicing lawyers in the fields of constitutional, environmental and administrative law, in particular: U.V. Antonyuk, O.A. Hrytsan, A.P. Hetmana, became the theoretical basis for researching the current state of legal protection of the natural environment, S.O. Gunko, V.V. Jerelia, O.M. Yeschuk, M.M. Zaveryukhi, A.E. Kostina, O.V. Sivaka, M.M. Slyvky, I.D. Kazanchuk, R.V. Myronyuka, D. Marshalek, O.M. Tkachenko, M.V. Shulgy and others. At the same time, there are currently no scientific studies related to the analysis of legal measures to protect the natural environment, which are necessary for Ukraine in the conditions of the legal regime of martial law and in the post-war period, which determines the relevance of this article.

**The purpose** of the article is to investigate the concept of "legal protection of the natural environment", to analyze the current state and to determine the prospects for improving the legal protection of the natural environment on the way to

European integration in the field of environmental protection.

**Presenting main material.** The irreversibility of Ukraine's European course, enshrined in the fifth paragraph of the preamble of the Constitution of Ukraine [2], conditions the determination of the directions and methods of their implementation in all spheres of life of society and the state. One of these directions is environmental protection, rational use of natural resources, ensuring environmental safety of human life. For this purpose, our state implemented and even during the legal regime of martial law continues to implement an environmental policy on its territory, aimed at preserving an environment safe for the existence of living and non-living nature, protecting the life and health of the population from the negative impact caused by environmental pollution natural environment, achievement of harmonious interaction of society and nature, protection, rational use and reproduction of natural resources.

However, it should be stated that as a result of the full-scale war in Ukraine, the ecological problems that existed in Ukraine before its beginning became much more complicated. Thus, the lack of access to the territories and objects of nature protection management, the loss and destruction of infrastructure, the loss of personnel and the limited ability to work, the suspension of control measures and the cancellation of the obligation to pay the ecological tax during the period of martial law negatively affected the opportunity to fully implement state management in the industry protection of the surrounding natural environment. This fully applies to the implementation of proper legal protection of the surrounding natural environment.

According to Art. 5 of the Law of Ukraine "On the Protection of the Natural Environment", the natural environment as a set of natural and natural-social conditions and processes, natural resources that are involved in economic circulation, as well as unused in the economy in the current period (land, subsoil, water, atmospheric air, forest and other vegetation, animal life), landscapes and other natural complexes are subject to state protection on the territory of Ukraine [3].

Before considering the current state of legal protection of the natural environment and prospects, it is necessary to first of all find out what should be understood by the term "legal protection of the natural environment".

Note that at the doctrinal level there is no single point regarding the definition of this definition. Analyzing the scientific works of such scientists as S.I. Gunko, I.D. Kazanchuk [4, p. 101], it should be noted that the interpretation of environmental protection as a system of state and public measures (economic, administrative-legal, international) aimed at the harmonious interaction of society and nature, the preservation and reproduction of active ecological communities and natural resources in the name of I of present and future generations.

O. Krupchan and V. Pereplyuk, researching the administrative-legal aspect of the categories "legal protection" and "legal protection" of property rights, point out that protection and protection measures should be oriented to the needs of a specific person, which is a manifestation of people-centrism [5, p. 23]. We agree with this statement, because if we talk about the legal protection of the natural environment, then according to Art. 16 of the Constitution of Ukraine [2] and Art. 5 of the Law of Ukraine "On Environmental Protection" [3], a person acts directly as an object of ecological and legal protection.

It is worth noting that the term "protection" of the natural environment, which is close to the concept of "protection", is also often used in legal literature. However, these concepts are not synonymous, because the law should have a more subtle toolkit, both for the protection of subjective rights and for the protection of rights in the event of their violation. I.L. Borodin actually held such a position regarding the theoretical study of the problems of administrative and legal methods of protection, including property rights of man and citizen [6, p. 116].

A supporter of this point of view is also scientist I.D. Kazanchuk. Researching the concept and content of administrative and legal protection of the natural environment, the scientist notes that the term "protection" is broader in nature, as it encompasses a system of measures aimed at eliminating negative anthropogenic or natural

impacts on the environment, supporting and ensuring the normal functioning of ecosystems [7, p. 74].

V.V. Galunko in his writings also emphasizes that the term "protection" on the one hand acts as a direct legal protection of the social interests of citizens of social groups of the entire society, and on the other - as a stimulation of such social actions, the result of which would be the strengthening of existing social relations and neutralization of those social trends that threaten them [8, p. 131]. According to the scientist, administrative-legal protection should be considered in a narrow and broad sense, and a broad understanding of this concept consists of elements of administrative-legal protection and protection [9, p. 242].

The most successful, in our opinion, is the definition enshrined in the Ecological Encyclopedic Dictionary, in which "environmental protection" is defined as a set of international, state and regional measures, including administrative, political, technological, social and public, aimed at preserving the necessary amount of natural resources on the ground, which ensures the stability of the environment [7, p. 75].

Thus, having analyzed the above-mentioned definitions, in our opinion, the concept of "legal protection of the natural environment" should be understood as a system of normative legal prescriptions (rules of law) and international, state, and regional measures, which are established at the international, national, and regional levels with the aim of ensuring the preservation and restoration of natural and natural-social conditions and processes, natural resources that are involved in economic circulation, as well as unused in the economy in this period (land, subsoil, water, atmospheric air, forest and other vegetation, animal life), landscapes and other natural complexes.

When conducting a study of the current state of legal protection of the natural environment, it should be noted that the legal regulation of relations in this field is carried out by: the Constitution of Ukraine, the Land Code of Ukraine, the Water Code of Ukraine, the Forest Code of Ukraine, the Code of Ukraine on Subsoil, the Law of Ukraine "On Environmental Protection", the Law of

Ukraine "On the Protection of Atmospheric Air", the Law of Ukraine "On the Natural Reserve Fund of Ukraine", "On the Animal World", the Resolution of the Verkhovna Rada of Ukraine "Procedure for restriction, temporary ban (suspension) or termination of the activities of enterprises, institutions, organizations and objects in case they violate the legislation on environmental protection", by the Decree of the Cabinet of Ministers of Ukraine "On approval of the National Action Plan on environmental protection for the period until 2025", etc.

Note that thanks to the chosen course of Ukraine regarding European integration in the field of environmental protection, 9 normative legal acts related to environmental protection were approved during 2022, in particular: the Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding the Introduction of Liability for Violations of the Procedure for the Implementation of Strategic environmental assessment" dated 03.11.2022 No. 2717-IX, Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Improvement of Legislation in the Field of Subsoil Use" dated 01.12.2022 No. 2805-IX, Law of Ukraine "On Ratification of the Amendment and Second Amendment to Convention on Environmental Impact Assessment in a Transboundary Context" dated 07/18/2022 No. 2403-IX, Law of Ukraine "On the Ratification of the Agreement between Ukraine and the European Union on Ukraine's Participation in the EU LIFE Program - Environment and Climate Action Program" dated 09/20/2022 No. 2590-IX, Law of Ukraine "On the National Register of Emissions and Transfer of Pollutants" dated September 20, 2022 No. 2614-I X, Law of Ukraine "On Ensuring Chemical Safety and Management of Chemical Products" dated 01.12.2022 No. 2804-IX, Law of Ukraine "On Amendments to Certain Legislative Acts on Forest Preservation" dated 20.06.2022 No. 2321-IX, Law of Ukraine "On waste management" dated 06/20/2022 No. 2320-IX, Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding Improvement of the Mechanism for Regulation of Air Pollutant Emissions" dated 07/09/2022 No. 2393-IX, etc.

However, we believe that in the conditions of martial law, the urgent issue is not only the adoption of normative legal acts, but also the adoption of a complex of measures by state authorities, because the damage that has already been caused to the environment is significant and requires an immediate response not only from our state, but also the whole world.

Thus, according to the Ministry of Environmental Protection and Natural Resources of Ukraine, as of the end of December 2022, 2,278 facts of damage caused to the environment of the Russian Federation were recorded, the amount of material damages was 1,696 billion UAH, 865 materials were handed over to law enforcement agencies [10].

Note that Ukraine has already taken the first steps in reforming the nature protection function. The Association Agreement signed in 2014 between Ukraine and the European Union became the main lever in carrying out reforms in the environmental and climate areas of the state, which gave Ukraine the opportunity to be one of the first to support the European Green Course initiative and start a dialogue with the European Union regarding Ukraine's accession to it, which happened in 2020. It is positive that even during the armed conflict, the European Commission supports Ukraine's plans for post-war "green" reconstruction and the further implementation of the European Green Course, which was confirmed on January 9, 2023 by the Executive Vice President of the European Commission Frans Timmermans during a meeting with the President of Ukraine Volodymyr Zelenskyi, Prime Minister of Ukraine Denys Shmyhal and other government officials. Just last year, Ukraine and Switzerland signed an agreement on attracting investments in Ukrainian climate projects of "green" recovery, and during the main climate event - COP27 - a corresponding dialogue was started with Japan [11].

Cooperation with international partners and restoration of the natural environment after the war is one of the state's priorities for the coming years. After all, most of the territory is damaged or is in a critical ecological state. One of the most widespread factors of negative impact on the natural environment is the high intensity of military

operations, which leads to massive emissions of CO<sub>2</sub> and contributes to climate change. Large-scale movement of vehicles and constant explosions and bombings lead to widespread physical damage to sensitive landscapes and biodiversity. According to the latest calculations by specialists of the Ministry of Environmental Protection and Natural Resources of Ukraine and international experts, at least 33 million tons of CO<sub>2</sub> emissions were recorded as a result of the war, of which: from hostilities - about 8.9 million tons of CO<sub>2</sub>; from the movement of internally displaced persons - about 1 million tons of CO<sub>2</sub>; from fires – more than 23.4 million tons of CO<sub>2</sub>eq. Potential indirect emissions of greenhouse gases due to the need for post-war reconstruction and reconstruction are estimated at about 48.7 million tons of CO<sub>2</sub> [10].

Deliberate large-scale incidents (bombing, use of artillery, etc.) by the aggressor country lead to transboundary effects of pollution of air, aquifers and seas, which will ultimately affect the global climate. Therefore, the main task before the state is to ensure the state policy in the field of environmental protection in wartime and postwar period. This is not only a moral obligation of the state leadership to take specific steps to protect the environment, but also a legal obligation [12, p. 153].

It should be noted that a lot has already been done in this direction in Ukraine. First of all, a number of the above-mentioned regulatory and by-laws were adopted, which regulate the basics of the organization of environmental protection, including during martial law and during the reconstruction period. One of them is the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Activities in the Environmental Sphere and Civil Protection for the Period of Martial Law and the Reconstruction Period" dated March 15, 2022 No. 2132-IX [13]. The positive points of the mentioned legal act are the regulation of activities in the field of environment not only during the period of martial law, but also during the reconstruction period, however, the following issues were left out of the legislator's attention: 1) regulation of the procedure for assessing the impact on the environment and protecting the animal world in wartime; 2) implementation of the

functions of environmental supervision (control) regarding the protection and preservation of forests and territories of the nature reserve fund, protection of subsoil, atmospheric air, water, etc.

If we talk about the implementation of the function of state environmental supervision (control) in conditions of military aggression, then its regulation is carried out in the Resolution of the Cabinet of Ministers of Ukraine "On the termination of measures of state supervision (control) and state market supervision in conditions of martial law", adopted on March 13, 2022 No. 303 [14]. By this resolution, planned and unplanned measures of state supervision (control) for the period of martial law in Ukraine have been suspended [15, p. 652].

Secondly, the Decree of the President of Ukraine dated April 21, 2022 No. 266/2022 "Issues of the National Council for the Recovery of Ukraine from the Consequences of War" [16] established the National Council for the Recovery of Ukraine from the Consequences of War. A working group of representatives of the Ministry of Environmental Protection and Natural Resources of Ukraine, scientists, national and international experts, and representatives of the public developed the section "Ecological safety" for the project of the National Recovery Plan of Ukraine, the priority areas of which are:

- reform of state environmental management;
- the policy of mitigating the consequences of climate change and adapting to them;
- environmental safety and effective waste management;
- sustainable use of natural resources;
- preservation of natural ecosystems, biological diversity, as well as restoration and development of protected areas.

Thirdly, since the beginning of the full-scale invasion of the Russian Federation on the territory of our country, specialists of the State Environmental Inspection, together with members of the Operational Headquarters, have been constantly working on the development of legal documents that will provide an opportunity to document the environmental crimes of the aggressor country for the purpose of further reparations. Yes, in eight months, 7 methods of

damage determination were developed and entered into force, in particular: Methodology for determining the amount of damage caused to land and soil as a result of emergency situations and/or armed aggression and hostilities during martial law, approved by order of the Ministry of Environmental Protection and Natural Resources of Ukraine dated April 4, 2022 No.167; The methodology for calculating unorganized emissions of polluting substances or a mixture of such substances into atmospheric air as a result of emergency situations and/or during martial law and determining the amount of damage caused, approved by order of the Ministry of Environmental Protection and Natural Resources of Ukraine dated April 13, 2022 No.175; The methodology for determining damages caused as a result of water pollution and/or clogging, arbitrary use of water resources, approved by order of the Ministry of Environmental Protection and Natural Resources of Ukraine dated July 21, 2022 No.252; The methodology for determining damage caused to the surrounding natural environment within the territorial sea, exclusive maritime (economic) zone and internal sea waters of Ukraine in the Azov and Black Seas, approved by the order of the Ministry of Environmental Protection and Natural Resources of Ukraine dated August 19, 2022 No. 309; The

methodology for determining the amount of compensation for damages caused to the state as a result of arbitrary use of the subsoil was approved by the order of the Ministry of Environmental Protection and Natural Resources of Ukraine dated September 15, 2022 No. 366; The methodology for determining the damage and losses caused to the forest fund as a result of the armed aggression of the Russian Federation, approved by the order of the Ministry of Environmental Protection and Natural Resources of Ukraine dated October 5, 2022 No.414; The methodology for determining the damage and losses caused to the territories and objects of the nature reserve fund as a result of the armed aggression of the Russian Federation was approved by the order of the Ministry of Environmental Protection and Natural Resources of Ukraine dated October 13, 2022 No. 424.

According to static data provided and calculated by the State Environmental Inspection with the help of these Methods, as of November 10, 2022, the total amount of calculated damage to the surrounding natural environment as a result of armed aggression is 1.69 trillion hryvnias, while in 2021 the amount of damage caused to the surrounding natural environment environment (environment) amounted to 850.5 million hryvnias (see table).

*Table*

Environmental damage as of November 2022

The total amount of damage caused to the natural environment is 1.69 trillion. UAH		
Damages caused to land resources - UAH 448.9 billion	Damages caused water resources -UAH 55.7 billion	Damage caused by atmospheric air - UAH 927 billion

Fourth, an agreement was concluded between Ukraine and the European Union regarding Ukraine's participation in the Environment and Climate Action Program (LIFE Program) and a total of 7 memorandums, agreements and declarations on cooperation in the field of environmental protection were signed, in particular with such countries as: Switzerland, Romania, Republic of Lithuania, Japan, Canada, Czech Republic, Poland. Also, on December 30, 2022, 30-year-old diplomatic relations with the Russian Federation in the field of water relations were severed.

Fifth, the Resolution of the Cabinet of Ministers of Ukraine dated December 16, 2022 No. 1394 "On Amendments to the Regulations on the Single Ecological Platform "EkoSystem" [17] carried out a digital transformation of the environmental sphere by developing the "EkoZagroza" web resource - information and communication system, which consists of a website and a mobile application of the service for fixing environmental threats and the territory of Ukraine "EkoZagroza", electronic offices, registers, a geo-information portal, an analytical platform and provides for the submission of electronic appeals regarding detected cases of

violation of the requirements of the legislation on the protection of the natural environment in the territory of Ukraine.

It should be emphasized that despite a number of positive steps in ensuring state policy in the field of environmental protection, in the near future Ukraine needs to implement a set of measures of a legal nature regarding reforms in such areas as: legal responsibility for environmental violations; environmental control; environmental monitoring.

**Conclusions.** Based on the above, it can be concluded that the concept of "legal protection of the natural environment" should be understood as a system of normative legal prescriptions (norms of law) and international, state and regional measures, which are established at the international, national and regional levels in order to ensure the preservation and restoration of natural and natural-social conditions and processes, natural resources that are involved in economic circulation, as well as unused in the economy in this period (land, subsoil, water, atmospheric air, forest and other vegetation, animal life), landscapes and other natural complexes

It should be noted that the constitutional provisions and norms of environmental legislation regarding the protection of the natural environment require further improvement. We consider it necessary, as soon as possible, to adopt the draft Law "On Amendments to Certain Legislative Acts of Ukraine Regarding the State Environmental Monitoring System, Information on the State of the Environment (ecological information) and Information Support for Environmental Management" dated 04/28/2027 No. 7327 and the draft Law "On state environmental control" from No. 3091 dated 19.02.2021, development of a mechanism for compensation for damage caused to the environment of the Russian Federation in full, creation of an independent environmental control body, implementation of comprehensive measures to clean up the natural environment, especially related to the collection, safe disposal and disposal of huge the amount of waste from war and other waste, which will help to reduce immediate risks for the health of the population of Ukraine.

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## ПРАВОВА ОХОРОНА НАВКОЛИШНЬОГО ПРИРОДНОГО СЕРЕДОВИЩА В УКРАЇНІ: СУЧАСНИЙ СТАН ТА ПЕРСПЕКТИВИ

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**Метою** даної статті є дослідження поняття «правова охорона навколишнього природного середовища», аналіз сучасного стану правової охорони навколишнього природного середовища та визначення перспектив її покращення на шляху до євроінтеграції в сфері захисту довкілля. У роботі застосовано загальнонаукові та спеціально-юридичні методи наукового пізнання, зокрема: системно-структурний метод, метод спостереження, метод узагальнення, методи аналізу та синтезу. **Результати:** на основі дослідження правових норм і положень наукових праць здійснено термінологічний аналіз та надано авторське визначення дефініції «правова охорона навколишнього природного середовища». Зроблено висновок, що не зважаючи на ряд позитивних кроків у забезпеченні державної політики в галузі охорони навколишнього природного середовища, в Україні найближчим часом потрібно здійснити реформування у таких сферах як: юридична відповідальність за екологічні порушення; екологічний контроль; моніторинг стану довкілля. **Обговорення:** в умовах воєнного стану нагальним питанням є не лише прийняття нормативно-правових актів, а й вжиття комплексу заходів органами державної влади. Підкреслено, що у даному напрямку в Україні вже зроблено чимало, зокрема: 1) прийнято ряд нормативно-правових актів; 2) створено Національну раду з відновлення України від наслідків війни; 3) розроблено розділ «Екологічна безпека» до проекту Національного плану відновлення України; 4) розроблено сім методик визначення збитків, завданих навколишньому природному середовищу; 5) укладено угоду щодо участі України у Програмі дій з довкілля та клімату (Програма LIFE) тощо.

**Ключові слова:** довкілля; навколишнє природне середовище; правова охорона; захист; атмосферне повітря; екологічний злочин; шкода; юридична відповідальність.

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